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Teleport Communications Group
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July 16, 1996

Regina M. Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex parte Communication in Docket 96-98

Dear Mrs. Keeney:

Teleport Communications Group Inc. (TCG) wishes to bring an important issue to the Commission's attention regarding anti-competitive negotiating positions being taken by several incumbent local exchange carriers (ILECs).

TCG intends to offer competitive tandem services, as permitted under this Commission's orders,¹ to allow interexchange carriers (IXCs) to complete calls to subscribers served by ILEC end offices. In connection with its ongoing negotiations under Sections 251 and 252 of the Telecommunications Act of 1996, TCG has attempted to negotiate terms to govern the joint completion of switched access calls. The key issue in such negotiations is to establish what the ILEC will charge the IXC (or TCG) in connection with such jointly-provided switched access calls. There is a risk that the ILEC, having the greater market power, will insist on billing the IXC rates or rate elements that should more properly belong to TCG.

TCG has, however, encountered several ILECs that take the position that they are not required to negotiate these tandem interconnection issues pursuant to Sections 251 and 252. Other ILECs have argued that TCG is seeking "access charge reform," and that they will not negotiate that either.

¹See Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II, CC Docket No. 91-141, 9 FCC Rcd 2718 (1994) ("The steps we now take will enable interconnectors, as well as other parties, to provide tandem switching functions ... these measures will open the door to third parties to provide competitive tandem-switching services.")

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Chief, Common Carrier Bureau
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An example of the type of response TCG has received from ILECs on this matter is provided by the attached letter from Southwestern Bell. TCG's response is also attached. By contrast, a few ILECs have been willing to negotiate with TCG regarding these issues, which demonstrates that the more extreme ILEC positions are not realistic.

TCG believes that the ILEC obligation under Sections 251 and 252 to negotiate these matters cannot be seriously questioned. Section 251(c)(2) requires that ILECs negotiate "for the transmission and routing of telephone exchange service and exchange access...on rate, term, and conditions that are just, reasonable, and nondiscriminatory." The competitive tandem service which TCG wishes to offer requires the ILEC to "transmit and route exchange access," and thus falls squarely within the mandate of the Act. Moreover, there is no logical or legal basis on which to say that ILECs must negotiate for the exchange of jointly provided local traffic -- a proposition no one disagrees with -- but that they do not have to negotiate for the exchange of jointly provided switched access traffic. These required negotiations must govern both the technical and economic aspects of the cooperative provision of these services.

TCG wishes to bring this issue to the Commission's attention in connection with its consideration of local competition issues. To ensure that the Commission's pro-competitive policies are not frustrated by ILEC refusal to negotiate as to the essential interconnections for the exchange of jointly provided access traffic, TCG requests that the Commission make clear that the obligation of ILECs to interconnect with CLECs, and to negotiate and arbitrate such interconnection, extends to the joint provision of switched access services.

TCG would further request that the Commission make clear that, for purposes of arbitrating interconnection agreements, this Commission's rules require that the ILEC is not entitled to receive compensation for tandem and tandem transport related rate elements, but only end office related activities, where a competitive tandem service is being provided. Such a declaration -- which merely says that ILECs are not entitled to compensation for services they do not provide -- will go a long way to reducing the ILEC resistance and unreasonable positions that TCG has encountered in its recent negotiations. Given that the Court of Appeals has already declared² that the Commission's current tandem pricing arrangement is not appropriate, ILECs should not be allowed to receive a "windfall" in transport

²See *Competitive Telecommunications Association v. FCC*, slip opinion, July 5, 1995.

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revenues where TCG or other competitors provide all the tandem switching and transport functions.

Moreover, allowing and encouraging the competitive provision of tandem services will have several pro-competitive benefits. As TCG begins to compete in the provision of tandem services, it will begin to serve as a "marketplace check" on the appropriateness of ILEC switched access prices. Just as competition in the Special Access market led to more reasonable prices and practices, competition in tandem switching will lead to more realistic, market based prices. This will allow the forces of competition to begin to reshape access charges, rather than relying on regulation alone.

TCG would be pleased to explain this situation in more detail should the Commission wish. Please call me at 718-355-2671 with any questions. Thank you.

Sincerely,

J. Manning Lee
Vice President, Regulatory Affairs

cc: Paul D'Ari
Rudy Baca
James Casserly
Dan Gonzales
Richard Metzger
John Nakahata
Judy Nitsche
David Sieradzki
Richard Welch
Office of the Secretary

Southwestern Bell

June 27, 1996

Larry B. Cooper
General Manager-
Competitive Provider
Account Team

Ms. Wanda Montano
Director, Competitive Local Exchange
Teleport Communications Group
Two Teleport Drive, Suite 300
Staten Island, NY 10311-1004

Dear Wanda:

At our last meeting, TCG indicated that it believed it could agree with SWBT on all issues, with slight modifications, if SWBT could agree to TCG's proposal to introduce access tandem competition through some reassignment of the RIC charge from SWBT to TCG (where a call went through the TCG access tandem and terminated through TCG's collocated facilities at a SWBT end office). We appreciated your acknowledgment that there is no obligation under the law for SWBT to negotiate switched access charges with TCG and your efforts since our last meeting to articulate the proposal in differing terms in the hopes of finding an approach that would be agreeable to SWBT. We have taken each of your proposals seriously and attempted to evaluate what they might mean to SWBT and whether we should counter them. Having exhausted that effort, I am writing to let you know that SWBT is not willing to negotiate switched access charges, or the RIC charge specifically, as a part of these interconnection negotiations.

Being mindful that we are at the point where a party could seek arbitration of our negotiations under the law, I am also writing to ask you to state TCG's terms for an agreement that does not include the above access compensation issues. SWBT is willing to improve its initial rate proposal as follows:

	<u>INITIAL RATE</u>	<u>PROPOSED REVISED RATE</u>
Interconnection Rate	.0098	.0072
Tandem Rate	.0183	.00975
Transit Rate	.0085	.003
Hybrid Rate (for Option EAS)		.020

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Suite 0325
Dallas, Texas 75202

Phone 214 464-8145
Fax 214 464-1486

I would like to know TCG's position with respect to these rates. Also, if there are any other terms you require as a part of an interconnection agreement, please include them in your response. I have your requirements for performance standards and expect that we will need to discuss this topic in greater detail at our next meeting.

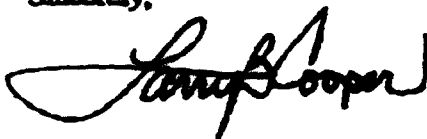
In addition to the fact that it is time for us to reach an interconnection agreement under the law, TCG's placement of trunk orders with SWBT for local service interconnection purposes creates additional urgency. As we discussed, SWBT is willing to accept those trunk orders based upon your acknowledgment that we need an agreement on a number of issues before live traffic can be passed between our respective networks. In addition to finalizing agreeable arrangements for the interconnection facilities themselves, those issues include:

- 1) Agreement on the handling of 911 calls.
- 2) Agreement on the process and terms for inclusion of TCG customer listings in SWBT white page directories and directory delivery.
- 3) Agreement on the handling and billing for alternately billed calls such as third number, collect, credit card, etc.
- 4) Agreement on meet-point arrangements for IXC switched access traffic.
- 5) Agreement on compensation for certain types of traffic, i.e., LSV/BLI operator coordination, intraLATA toll, and cellular traffic if it transits SWBT's switch.
- 6) Agreement on operations procedures and methods for ordering, provision, and maintenance.
- 7) Agreement on compensation for traffic that transverses SWBT's network but does not originate or terminate on SWBT's network (through-put traffic).
- 8) Independent company concurrence that TCG originated calls can be terminated to independent network (and vice versa).

I know TCG agrees that these issues at a minimum must be resolved. If there are other issues, please let me know. At our last meeting, we had expected to receive TCG's applications for physical collocation immediately. To my knowledge, we have not received any applications yet.

As soon as you are ready to meet again, please call me or Jeff Fields at (214) 464-5676. We look forward to completing these negotiations.

Sincerely,





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BY FACSIMILE AND FEDERAL EXPRESS
(214-464-1486)

July 10, 1996

Mr. Larry B. Cooper
General Manager -- Competitive Provider Account Team
Southwestern Bell Telephone Company
One Bell Plaza
Dallas, Texas 75202

Dear Larry:

This is in response to your letter which was dated June 27, 1996. Because it was sent by regular mail, I did not receive it until just a few days ago. Given the time sensitive nature of these negotiations, I would encourage you to utilize facsimile or overnight services for important communications in the future.

Having read your letter, I am disappointed that Southwestern Bell (SWBT) is attempting to put words in TCG's mouth that we did not say.

You say in your letter that "TCG indicated that it could agree with SWBT on all issues, with slight modification, if SWBT could agree to TCG's proposal to introduce access tandem competition." While TCG did state that we could agree to a number of the issues as presented by SWBT -- although certainly not all, and certainly not with only "slight modification" -- it was clearly stated throughout that TCG's willingness to consider accepting SWBT's position on *anything* was predicated on SWBT's acceptance of TCG's position on Feature Group Interconnection, which you refer to as access tandem competition. TCG also made it clear that if SWBT did not agree with TCG on that point, TCG would be unable to accept SWBT's position. From your June 27, 1996 letter, it is clear that SWBT is unwilling to work with TCG to fairly negotiate terms for Feature Group Interconnection, and therefore TCG's willingness to consider SWBT's positions is no longer relevant, other than as a clear indication that TCG has negotiated in good faith.

You also say that you "appreciate TCG's acknowledgment that there is no obligation under the law for SWBT to negotiate switched access charges." Neither I nor Mr. Mercier ever talked about "negotiating switched access charges" nor do we recall "acknowledging" anything about SWBT's legal obligations. I would suggest that you leave the question of SWBT's legal obligations to the lawyers and Commissions that must determine them, rather than attribute legal opinions to non-lawyers like Mr. Mercier and myself.

Mr. Larry B. Cooper
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In any event, as we have repeatedly explained, the Feature Group Interconnection we are trying to negotiate relates to the need for an equitable and consistent set of assumptions where both TCG and SWBT provide a portion of the Feature Group service. Where TCG provides the tandem function, there needs to be a fair and consistent basis for assessing Feature Group charges to ensure that IXCs are fairly charged. What TCG is requesting, therefore, is no different in principle than the "meet point billing" arrangements that are commonly used by monopoly telephone carriers today. This is not "negotiation of access charges" but is merely the implementation of the procedures for providing Feature Group services jointly to our customers. TCG cannot and will not agree to any interconnection agreement that does not address the essential question of how interexchange carriers are to be charged for jointly provided Feature Group services, any more than it could agree to an interconnection agreement that does not address how to handle the billing of jointly provided local services.

TCG is also disappointed in SWBT's continuing attempt to impose high usage sensitive compensation rates and thus ignore the plain language of the Texas statute and the Telecommunications Act of 1996 which require and permit the use of bill and keep for transport and termination. TCG notes that the Honorable Debra Danburg wrote to the Texas Public Utility Commission on May 30, 1996, expressing her serious concern about SWBT's reported insistence on usage sensitive compensation as an "attempt to circumvent the state's well-reasoned position of refusing to condone measured rate local service."

TCG believes that your latest revision in your offer of usage sensitive rates for transport and termination is clearly unacceptable. Given that SWBT's operating areas feature very large, flat rated calling areas, competitive local exchange carriers cannot operate efficiently and fairly under usage sensitive transport and termination rates, as Ms. Danburg's letter aptly recognizes. SWBT's proposed usage rates, even at the latest "reduced" levels, still threaten the development of competition, and are far higher than the usage sensitive rates that have been prescribed on an interim basis by a number of Commissions elsewhere. Additionally, TCG has elsewhere stated that, where a Commission rejects bill and keep and insists on imposing transport and termination charges only flat rated charges should be used.

Mr. Larry B. Cooper

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I am also puzzled as to your request for "any other terms" TCG will require as a part of an interconnection agreement. TCG has provided SWBT with detailed proposals of the scope of an interconnection agreement and the various issues that must be resolved. TCG organized these issues into a Three-Part Agreement of well over one hundred twenty pages in length. If you have lost or misplaced your copy of that proposal, please let me know and I will gladly send you another. That document contains a discussion of the issues that need to be negotiated.

The remainder of your June 27, 1996 letter relates to SWBT's continuing refusal to provision interconnection arrangements on an interim basis to permit TCG customers to complete calls. I do not agree with your characterization of TCG's position. TCG will address those issues separately.

Finally, I wish to note TCG's concern that SWBT's continuing opposition to TCG's SPCOA application in Texas has made our entry into the local exchange marketplace much more costly. SWBT cannot be negotiating a good faith interconnection agreement with TCG with one hand, while opposing our right to provide local exchange service with the other. This problem has persisted. TCG would request that SWBT immediately withdraw its opposition and appeal of TCG's SPCOA application, and that it commit not to intervene in or oppose other TCG LEC applications in SWBT's region.

Sincerely,

A handwritten signature in cursive script, reading "Wanda Montano".

Wanda G. Montano
Director, Carrier Relations
Competitive Local Exchange Carrier Services

cc: Madelon Kuchera, Bill Riggan, Bob Mercier, Mike Pelletier